

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DANNY DYKES, INDIVIDUALLY AND
ON BEHALF OF THE ESTATE AND
WRONGFUL DEATH BENEFICIARIES
OF JAMES A. DYKES, DECEASED

PLAINTIFFS

V.

CIVIL ACTION NO. 4 : 15cv076 -DMB -JMV

CLEVELAND NURSING & REHABILITATION
CENTER and JOHN AND JANE DOES I-X

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Cleveland Nursing and Rehabilitation Center, LLC ("Cleveland") files this Notice of Removal of the civil action styled *Danny Dykes, Individually and on behalf of the Estate and Wrongful Death Beneficiaries of James A. Dykes, Deceased v. Cleveland Nursing & Rehabilitation Center*; Civil Action No. 2015-0027, from the Circuit Court of the Second Judicial District of Bolivar County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division. In support of this Notice, Cleveland states the following:

1. Plaintiff Danny Dykes filed this medical negligence action on April 20, 2015. The lawsuit arises out of the care and treatment provided to James Dykes while a resident of Cleveland Nursing and Rehabilitation Center, LLC. According to the Complaint, James Dykes suffered injuries and death as a result of Cleveland's alleged negligence.

2. Plaintiff served Cleveland with a copy of a Summons and Complaint on May 15,

2015. *See* Exhibit A.¹ In the Complaint, Plaintiff asserts claims of negligence, wrongful death, and respondeat superior against the Defendant. Plaintiff also seeks to recover punitive damages from Cleveland. *See* Complaint at ¶ 26.

3. This removal is timely because Cleveland filed this Notice of Removal within thirty days of May 15, 2015, when the Plaintiff served Cleveland with its Summons. *See* 28 U.S.C. § 1446(b).

4. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and Cleveland.

5. It is apparent that the amount in controversy requirement is met because Plaintiff seeks damages for the wrongful death of James Dykes. *See De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993) (finding complaint for wrongful death to be facially apparent for damages exceeding amount-in-controversy requirement). Moreover, Plaintiff seeks punitive damages based on his allegations that Cleveland's conduct was grossly negligent. *See* Complaint at ¶ 26. A claim for punitive damages also must be considered while evaluating the amount in controversy. *See St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (holding that a district court must consider any claim for punitive damages when calculating the amount in controversy); *Sun Life Assur. Co. of Canada (U.S.) v. Fairley*, 485 F. Supp. 2d 731, 735 (S.D. Miss. 2007) (same).

6. Diversity of citizenship exists because the Plaintiff alleges to be a citizen of Mississippi, and Cleveland is not a citizen of Mississippi. Compl. at ¶ 1. As set forth in detail below, Cleveland Nursing and Rehabilitation Center, LLC, is a Mississippi limited liability

¹ Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons served on Cleveland is included in Exhibit A.

company whose members are all citizens of the State of New York. Therefore, Cleveland is a citizen of New York, not Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of an LLC is that of all its members).

7. Cleveland Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

8. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

9. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

10. Venue is proper in the United States District Court for the Northern District of Mississippi, Greenville Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(a)(3).

11. In accordance with 28 U.S.C. § 1446(d), Bolivar County Circuit Court and Plaintiff's counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit B.

WHEREFORE, Cleveland Nursing and Rehabilitation Center, LLC, requests that the above-captioned action now pending in Bolivar County Circuit Court be removed to the United States District Court for the Northern District of Mississippi, Greenville Division, and that the District Court assume jurisdiction over this lawsuit.

This the 11th day of June, 2015.

Respectfully submitted,

CLEVELAND NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

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By: s/ Clay Gunn
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CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following counsel of record:

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COUNSEL FOR PLAINTIFF

This the 11th day of June, 2015.

s/ Clay Gunn
CLAY GUNN